THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.22843 OF 2005

Dt.27.10.2005

Between:

Jubilee Hills Filling Station,

Jubilee Hills, Hyderabad, rep.

By its Proprietor, Mr.Sunil Kumar

… Petitioner

And

The Commissioner of Civil Supplies Corporation,

Civil Supplies Bhavan, Erra Manzil, Hyderabad

And 2 others. … Respondents

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies.

The petitioner is the licenced dealer under clause 3(3) of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (hereinafter referred to as 'the Order') in respect of Jubilee Hills Filling Station, Jubilee Hills, Hyderabad. It is stated that the petitioner is carrying the said business without violating any of the Clauses or Rules made thereunder in the said Order. While so, an inspection was made on 18.3.2005 on the petitioner and its licence was suspended pending enquiry for a period of one week. It is submitted that the said suspension order dated 22.3.2005 has been suspended by this Court in W.P.No.6433 of 2005 on 25.3.2005 with a direction to file an appeal before the first respondent within two

weeks. Thereafter, the petitioner filed an appeal before the first respondent and the first respondent issued a notice dated 28.6.2005 informing the date of hearing as 16.7.2005. It is stated that on that date the counsel for the petitioner attended and sought for adjournment and therefore the case was adjourned to 23.7.2005. Neither the counsel nor the petitioner attended on 23.7.2005 for hearing. Hence, the case is disposed of ex parte on the material available on record. It is stated that there is no variation of 626 liters, but it is only 13 liters within the permissible limits.

However, I am not inclined to appreciate the merits of the case. The only question that arises for consideration is whether the case was adjourned in the presence of the petitioner on 16.7.2005 to 23.7.2005? The records submitted by the learned Government Pleader for Civil Supplies goes to show that notice was given by fixing the date of hearing on 16.7.2005 at 3.00 p.m. The learned counsel for the petitioner submits that he has attended before the appellate authority on 16.7.2005 and sought for adjournment and adjournment was granted informing that further date of hearing would be informed separately. But the impugned proceedings dated 31.8.2005 goes to show that the learned counsel for the petitioner attended the hearing on 16.7.2005 and requested to adjourn the case and therefore the case was adjourned to 23.7.2005. Whether the date of adjournment from 16.7.2005 to 23.7.2005 was informed either orally or in writing is only the question to be considered.

The learned counsel for the petitioner in his affidavit submits that the case was adjourned in his presence, but the date of posting of hearing on 23.7.2005 was not intimated either to the petitioner or to his counsel and therefore the Director of Civil Supplies passed the impugned order ex parte in the absence of the petitioner.

Under Clause 28 of the Order, the licence or registration certificate of the dealer is liable to be cancelled or suspended for such period as may be specified by an order in writing by the licensing authority, provided that no order shall be made without giving reasonable

opportunity to the holder for representing his case in writing and also having heard in person before the proposed cancellation. No doubt, the suspension in the instant case is only pending enquiry, but not a measure of punishment. Aggrieved by the suspension order passed by the Chief Rationing Officer, Hyderabad, dated 22.3.2005, the petitioner filed an appeal. I am of the opinion that the appellate authority has rightly given the notice of hearing. But it is not clear as to whether the date of adjournment from 16.7.2005 to 23.7.2005 was intimated to the petitioner and his counsel.

Accordingly, the impugned order dated 31.8.2005 passed by the appellate authority is set aside and the matter is remitted back to the Director of Civil Supplies, A.P., Hyderabad, for hearing and disposal of the case in accordance with law. The date of hearing is fixed on 7.11.2005 and the petitioner or his counsel shall appear on the said date and there is no need to serve any notice by the Department.

The writ petition is accordingly disposed of. No costs.

_____ (V.ESWARAIAH, J.)

27.10.2005

Note:

Issue copy within two days

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